



PATENT APPLICATION OF  
BILLIE J. LONGSTRETH  
2204 ROSEANNE COURT, FAIRBORN, OHIO 45324  
CITIZEN OF THE UNITED STATES OF AMERICA  
APPLICATION NO. 09/025,896

APPEAL BRIEF

(1) REAL PARTY OF INTEREST

Billie J. Longstreth, pro se appellant, 2204 Roseanne Court, Fairborn, Ohio 45324.

(2) RELATED APPEALS AND INTERFERENCES

I was notified through an Office Communication dated April 11, 2000 from Charles Goodman, patent examiner, that my patent application, 09/025,896, for a cabbage cutter had been abandoned because I had failed to timely file a proper reply to a Patent Office Communication dated August 25, 1999. On April 19<sup>th</sup>, after receiving the Notice of Abandonment, I called Mr. Goodman to inform him that there must be some mistake because I had responded within the time limit on November 4, 1999 with amendments attached. During that telephone conversation, Mr. Goodman suggested that I send in a "Request for Reconsideration." I followed up this telephone conversation with a letter dated April 28, 2000 with postal receipts attached. In response to my letter dated April 28, 2000 questioning the abandonment of my application, I received an Interview Summary from Mr. Goodman, dated July 3, 2001, stating that my patent application was abandoned because it appeared some of the submitted papers after Final were not matched with the file in a timely manner due to inadvertent delay from the Office and that whether or not the Examiner or the Office may do something about this was yet to be determined, and that my Letter would be responded to in due course. On August 2, 2001, I filed Form PTO/SB/64, a "Petition for Revival of an Application for Patent Abandoned Unintentionally," with the Office of Petitions in accordance with 37 CFR 1.137(b) along with the required fee of \$620.00. Then on October 25, 2001, I filed a "Request for Continued Examination"

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along with the required fee of \$370.00 to continue the prosecution of my patent application.

#### (8) ARGUMENTS

(iii) Claim Rejection under 35 USC 102: The Examiner, Charles Goodman, rejected my claim under 35 U.S.C. 102(b) as being anticipated by Seib et al because Seib discloses a stoma flange cutter comprising all the elements I claimed in my invention, the cabbage cutter, including, a circular top, a circular bottom, a cylindrical body wall, a permanently affixed cap, cutting edge, and a removable protective cover. In my opinion that is as far as the similarities go, and that because my invention, the cabbage cutter, comprises similar parts as does Seib's stoma flange cutter does not mean my invention, the cabbage cutter, is too similar to Seib's stoma flange cutter to warrant a patent. Although the two devices do possess the same parts per se, my invention, the cabbage cutter, is physically and operationally different from Seib's stoma flange cutter. Seib's stoma flange cutter differs from my invention, the cabbage cutter, in that the stoma flange cutter comprises two sections, a top section and a bottom section, that are separable and movable. The circular cutter that has been compared to my invention, is press fitted into a suitable groove, with support, on the first surface of the top section of the stoma flange cutter with the sharpened edge extending away from surface. The second section (bottom section) of the stoma flange cutter has first and second spaced surface portions. The cutting element is adapted to cut in cooperation with the second section, and the cutting element can be adapted to flip end-to-end when one end becomes dull, whereas, my invention, the cabbage cutter, comprises only one section, a hollow, metal, cylindrical body having two ends and when placed in a perpendicular position has a top and a bottom that are connected by a cylindrical wall; the top is closed and has a permanently affixed handgrip that covers the closed top and extends slightly over onto the wall of the cabbage cutter, and provides additional strength to the device. The bottom of the cabbage cutter is open and filed or rubbed down to a smooth, thin, sharp cutting and chopping edge. The cabbage cutter has a single cutting edge that cannot be adapted to flip end-to end as the stoma flange cutter due to the closed top and permanently affixed handgrip on the opposite end, but the single cutting edge of the cabbage cutter can be sharpened if the cutting and chopping edge should become

dulled from extensive use. When the stoma flange cutter is not in use, the device is inserted into an open ended envelope (package cover) means that is square in configuration with the lateral dimensions similar to the diametric extent of the device where sections are effectively held together for protection, storage, and transportation, whereas, the cabbage cutter has a removable protective cover, contiguous with the cutting and chopping edge, that is placed over the cutting and chopping edge to serve as a shield from injury and to protect the cutting and chopping edge from becoming damaged when the device is not in use or stored. Material is inserted between the two sections of the stoma flange cutter for cutting and then the sections are pushed together (one section in each hand) and rotated (if necessary) relative to each other. More particular, between pressure applied to and slight rotation of cutter relative to surface, the flange material is cut so that a flange having an appropriately sized hole is provided for its intended use, whereas, the cutting and chopping edge of the cabbage cutter is located on the open bottom rim of the cabbage cutter and the device works best when cabbage head is cut in chunks, placed in a large container, and an operator grasps the handgrip and brings the cutting and chopping edge down repeatedly (in an up and down motion) onto the cabbage, cutting the cabbage to desired size.

(iv) Claim Rejection under 35 USC 103: The Examiner used 35 USC 103(a) which forms the basis for all obviousness rejections as basis for rejecting my invention, the cabbage cutter. 35 USC 103(a) reads "A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patent ability shall not be negatived by the manner in which the invention was made." In my opinion, the physical appearance of the stoma flange cutter and the way the device operates is significantly different from the cabbage cutter. The stoma flange cutter as a whole is squarish in configuration with two sections that are attached to each other, whereas, the cabbage cutter as a whole is a single round cylinder. The differences between the stoma flange cutter and the cabbage

cutter are such that they would not be obvious to a person with ordinary skills in the field. In my opinion, the stoma flange cutter would not be easily recognized as a cutter because of the physical shape of the device and because the cutting element, that has been compared to my cabbage cutter, is imbedded within the top section of the device.